

R E M A R K S

Reconsideration of this application, as amended, is respectfully requested.

THE CLAIMS

Independent claim 1 has been amended to incorporate the subject matter of (now canceled) claim 3. In addition, claim 9 has been canceled. No new matter has been added, and it is respectfully requested that the amendments to the claims be approved and entered.

THE PRIOR ART REJECTION

Claims 1-3 and 9 were rejected under 35 USC 103 as being obvious in view of the combination of USP 6,215,892 ("Douglass et al") and USP 7,027,628 ("Gagnon et al"). This rejection, however, is respectfully traversed with respect to the claims as amended hereinabove.

According to the present invention as recited in amended independent claim 1, a microscopic image capture apparatus is provided which comprises a height coordinate acquisition position setting unit which automatically sets a plurality of positions in an XY direction over an extracted sample image in each of which a height coordinate Z is acquired. In addition, according to the present invention as recited in amended independent claim 1, the

height coordinate acquisition position setting unit sets a position of a grid point including the sample image in grid points of sections obtained by dividing the sample image area at predetermined intervals in grid form as one of the positions in which the height coordinate Z is acquired.

With this structure, height coordinate acquisition positions can be set at appropriate intervals only in areas in which a sample exists. As a result, the claimed present invention achieves an advantageous effect whereby a focal point can be certainly and accurately determined for adjustment in the Z direction on the basis of optimal precision of an adjustment of a tilt of a sample.

It is respectfully submitted that Douglass et al does not at all disclose, teach or suggest the above described feature and advantageous effect of the present invention as recited in amended independent claim 1.

In particular, it is respectfully submitted that Douglass et al does not disclose, teach or suggest setting a plurality of positions in an XY direction over an extracted sample image area, acquiring a height coordinate Z in each of the positions, and setting a position of a grid point including the sample image in grid points of sections obtained by dividing the sample image area at predetermined intervals in grid form as one of the positions in which the height coordinate Z is acquired.

On page 5 of the Office Action, with respect to the subject matter of (now canceled) claim 3 which is now recited in amended independent claim 1, the Examiner cites the disclosure in Douglass et al at column 11, lines 41-56 and in Figs. 13A, 14 and 15. It is respectfully submitted, however, that these portions of Douglass et al pointed to by the Examiner do not relate to setting a position of a grid point including the sample image in grid points of sections obtained by dividing the sample image area at predetermined intervals in grid form as one of positions in which a height coordinate Z is acquired, as according to the present invention as recited in amended independent claim 1.

In addition, it is respectfully submitted that Gagnon et al also does not disclose, teach or suggest setting a position of a grid point including the sample image in grid points of sections obtained by dividing the sample image area at predetermined intervals in grid form as one of the positions in which the height coordinate Z is acquired, as according to the present invention as recited in amended independent claim 1.

Accordingly, it is respectfully submitted that the present invention as recited in amended independent claim 1 and claim 2 depending therefrom clearly patentably distinguishes over Douglass et al and Gagnon et al, taken singly or in combination, under 35 USC 102 as well as under 35 USC 103.

In view of the foregoing, entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

/Douglas Holtz/

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